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Via Certified Mailing – Return Receipt

July 24, 2020

Kenneth Robin Baggett
Michelle Baggett
Owners and Managing Agents
Alpha Omega Winery, LLC
1155 Mee Lane
Saint Helena, CA 94574

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Baggett, Ms. Baggett, Owners and Managing Agents:

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, (“CWA” or “the Act”) that River Watch believes are occurring at the Alpha Omega Winery owned and/or operated by you (“Winery”) located at 1155 Mee Lane in Saint Helena, California. Notice is being sent to you as the responsible owners, operators, and managers of the Winery and real property. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Winery directly into Bale Slough, a blue line stream tributary of the Napa River, a navigable water of the United States impaired under CWA § 303(d) for nutrients, pathogens, sedimentation/siltation.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge complies with various enumerated sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p). CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water discharges under the NPDES permitting program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”)

has authorized California's State Water Resources Control Board ("SWRCB") to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the "General Permit") and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and comply with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under CWA § 505(a). Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred and continue to occur at the Winery. Consequently, Alpha Omega Winery, LLC is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Winery for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with applicable water quality standards set forth in the California Toxics Rule ("CTR") and the San Francisco Bay Regional Water Quality Control Board ("RWQCB") Water Quality Control Plan or "Basin Plan."

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated.

To comply with this requirement, River Watch notices the Winery of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CAS000001 (the General Permit) relating to services and operations taking place at the Winery.

The SWRCB's SMARTs reporting database provides documentation that the Winery, rather than seeking coverage under an individual NPDES permit: (i) filed a Notice of Intent ("NOI") on or about October 5, 2017 agreeing to comply with the terms and conditions of the General Permit; and (ii) filed a No Exposure Certification ("NEC") on or about August 27, 2015. The SWRCB approved the NEC on or about September 16, 2015 and the Winery was assigned Waste Discharge Identification ("WDID") number 2 28NEC000633. Correspondence from the SWRCB on the SMART's reporting database provides documentation suggesting the Winery failed to timely recertify the NEC in 2017 and 2018 and the NEC was scheduled for termination (*see* Attachment IDs 2104374 and 2284392). There are, as of the date of this Notice, no further updates as to status of the Winery under the General Permit.

River Watch alleges, on the basis of eye-witness reports, records publicly available, and/or records in the possession and control of the Winery, that if the Winery is operating under an NOI, its continuing industrial operations fail to comply, from Annual Reporting Year 2015-2016 to the present, with the strict terms and conditions of the General Permit. In the alternative, if the Winery is operating under an NEC, River Watch alleges that the Winery's continuing industrial operations do not meet the requirements for an NEC set forth in Section XVII of the General Permit.

The General Permit is clear on which industrial facilities qualify for an NEC. Only dischargers that meet all the requirements of the NEC Conditional Exclusion set forth in Section XVII of the General Permit are exempt from the Storm Water Pollution Prevention Plan ("SWPPP") requirements, sampling requirements, and visual requirements of the General Permit. It is River Watch's contention that the Winery does not meet the requirements of the NEC. Specifically, there are conflicting facts on the August 27, 2015 NEC form certified by Managing Partner Robin Baggett (*see* Exhibit A), and information on Site Map available on SMARTS provided by the Winery (*see* Exhibit B). The NEC form "Checklist" on Exhibit A includes checkmarks stating "Outdoor Storage Not Exposed;" "Private Roads ... Not Exposed;" and "Processed Wastewater Not Exposed." But the "Alpha Omega Winery Site Map" prepared by Delta Consulting & Engineering (*see* Exhibit B) reveals a "Concrete Production Yard" with an "Outdoor Work Area," a "Waste Water Pond," and exposed private roads on-site (to provide access for the industrial operations, as well as the on-site "Hospitality Building" with "Tasting Room"). Of principal concern to River Watch is that all of this industrial activity takes place in close proximity to Bale Slough, a blue line stream tributary to the nearby Napa River - a water of the United States.

Note that in the event Alpha Omega Winery, LLC has improperly certified and obtained an NEC for the Winery, it may be in violation of the federal False Claims Act. If during the course of this case River Watch determines that Alpha Omega Winery, LLC violated the False Claims Act, a separate notice of violations under the False Claims Act consistent with the requirements of that statute will be served.

2. The Activity Alleged to Constitute a Violation.

Full compliance with the mandates of the General Permit is not a mere statutory and regulatory exercise. The lands in and surrounding the Napa County Watershed produce a harvest of unparalleled bounty drawing acclaim worldwide. Failing to care for this critical environment as alleged in this Notice is a violation not only of law, but an abrogation of the trust we demand of Napa County landowners.

A review of publicly available information and eyewitness reports reveal that industrial operations at the Winery, classified as SIC Code 2084 ("Wines, Brandy, and Brandy Spirits"), are conducted both indoors and outdoors where they are subject to rain events. Because there is no compliance by the Winery with standard CWA permit requirements, there is no stormwater sampling, monitoring, or implementation of Best Management Practices that would control the discharge of pollutants and ensure there is no unlawful discharge of pollutants from the Winery. This concern for effective storm or process water pollution control extends to the following:

- The Winery property contains a "Waste Water Pond" which may discharge to Bale Slough, which flows in close proximity the "Approximate Property Line" outlined on the Alpha

Omega Winery Site Map (*see* Exhibit B). River Watch has failed to find any evidence demonstrating this pond is sufficiently sized or constructed to prevent overflows or subsurface releases.

- “Erosion and Sediment Controls” must be in place at the Winery to ensure roadways used for the trucking of supplies to, from, and within the Winery, as well as traffic to and from the “Hospitality Building,” are constructed and maintained to properly control stormwater discharges.
- The Winery must conduct a comprehensive potential pollutant analysis, including an analysis of transportation-related services to and from the Winery.

Note that in addition to the pollution controls imposed under CWA permitting, the RWQCB has established water quality standards applicable to facilities such as the Winery. The RWQCB’s Basin Plan includes both numeric and narrative standards.

3. The Person or Persons Responsible for the Alleged Violation.

The entity responsible for the alleged violations is Alpha Omega, Winery, LLC, as the owner and operator of the Winery.

4. The Location of the Alleged Violation.

The location of the various violations is the permanent address of the Winery at 1155 Mee Lane in Saint Helena, California, including the waters of Bale Slough and the Napa River – waters of the United States.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.

The range of dates covered by this Notice is from July 20, 2015 to the present. This Notice includes all violations which occur after the range of dates covered by this Notice up to the end of trial. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch’s mailing address is 290 South Main Street, #817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface water and ground waters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All

communications should be directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com

REMEDIAL MEASURES REQUESTED

River Watch believes that at a minimum, implementing the requirements of the General Permit as outlined in this Notice is necessary in order to bring the Winery into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Winery's alleged violations of the CWA as set forth in this Notice.

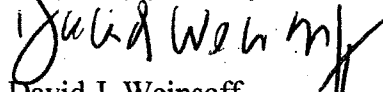
The General Permit, in the very first "Standard Condition," states that "Dischargers shall comply with all standard conditions in this General Permit. Permit noncompliance constitutes a violation of the Clean Water Act and the [California] Water Code and is grounds for enforcement action and/or removal from General Permit coverage" (General Permit Section XXI.A). The gravity of ensuring that the Annual Reports submitted to the State of California are complete and accurate is highlighted by the General Permit requirement that the person signing and certifying the document certifies that "to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations" (General Permit Section XXI.L).

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$55,800.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch encourages the Winery to contact counsel for River Watch within **20 days** after

receipt of this Notice to continue on-going discussions regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Winery is in compliance with the strict terms and conditions of the General Permit, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


David J. Weinsoff

DW:lm

Service List

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

John W. Busterud, Regional Administrator
U.S. Environmental Protection Agency
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Eileen Sobeck, Executive Director
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Kenneth Robin Baggett, Registered Agent
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